

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY MAGLIOCCO,

Petitioner,

ORDER

-against-

23 Civ. 4907 (PMH) (AEK)

WARDEN JOHN/JANE DOE,

Respondent.

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THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.

On May 2, 2024, the Court issued an order directing that by June 28, 2024, Respondent was “to provide a further update on the status of Petitioner’s Section 440.10 motion and, in accordance with the Order to Answer issued on June 23, 2023, state whether Respondent has ‘any objection to this action being stayed pending any exhaustion of Petitioner’s unexhausted grounds in the state courts.’” ECF No. 12. On June 27, 2024, Respondent filed his letter, stating that the stay of this habeas proceeding should be lifted, considering the “‘substantial lapse of time’ between filing the habeas petition and seeking to exhaust the claims within it” ECF No. 14 at 2. The last letter received by the Court in response to Respondent’s letter was a July 12, 2024 letter from Jonathan I. Edelstein, Esq., an attorney who had informed that Court that he was preparing and going to file the Section 440.10 motion on Petitioner’s behalf. *See* ECF No. 15. In his letter, Mr. Edelstein stated that he anticipated filing the Section 440.10 motion “at the earliest practical time,” but that “it would be reasonable and appropriate to continue the stay of Mr. Magliocco’s habeas petition at least until the end of August [2024].” *Id.*

To date, the Court has received no further updates regarding the status of Petitioner’s Section 440.10 motion. Accordingly, before deciding whether the stay of this habeas proceeding

should be lifted, the Court directs Respondent to file an update letter, **by no later than March 14, 2025**, notifying the Court as to whether the Section 440.10 has been filed, and if so, whether the motion has been fully briefed, and when a decision on the motion is expected. In addition, Respondent should include in the letter a description of the claim(s) raised in the Section 440.10 motion and how they relate to the claims asserted in the Amended Petition filed in this case at ECF No. 2.

The Clerk of Court is respectfully directed to mail a copy of this Order to the *Pro Se* Petitioner at his address of record on the docket.

Dated: March 3, 2025
White Plains, New York

SO ORDERED.



ANDREW E. KRAUSE
United States Magistrate Judge